Brimar Corporation *and* Shopmen's Local 508, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO. Case 7–CA–39903

August 10, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On August 7, 1998, Administrative Law Judge Robert T. Wallace issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order and to adopt the recommended Order, as modified.

We agree with the judge that the Respondent violated Section 8(a)(5) of the Act by its promulgation and implementation of new "workstation forms" without giving the Union timely notice and an opportunity to bargain concerning the forms, and by dealing directly with its employees by requiring them to sign the new forms. As discussed by the judge, the Respondent, in October 1996, without notice to the Union, began to require that employees sign a "workstation form" that, among other things, set forth certain production requirements. The form also recited that by signing the form the employee acknowledged that he or she understood what was expected of them regarding production.

Contrary to our dissenting colleague, we find that the unilateral introduction of the forms *was* a material, substantial, and significant change in terms and conditions of employment. See generally *Civil Service Employees Assn.*, 311 NLRB 6 (1993) (applying test). Requiring a represented employee individually to acknowledge, in writing, the standards that apply to him is different than simply setting those standards and communicating them. It holds employees accountable. Surely this is why the forms were introduced in the first place, as a means of establishing an employee's knowledge and assent. Either element could pose an issue for employees who were unaware of the standards or unwilling to assent to them, especially without some indication that their union had endorsed the initiative. The Respondent may well have wanted the proof represented by the form in connection with the ISO 9001 certification the Respondent sought. But once proof was obtained, it would certainly be available in other contexts: for example, to support the imposition of individual discipline or to show the union's agreement to the standards, should some dispute arise. Under the circumstances, it is not surprising that two employees here refused to sign the form. Their refusal, in turn, confirms the significance of the Respondent's unilateral action.

Goren Printing, 280 NLRB 1120 (1986), relied on by our dissenting colleague, is distinguishable. There, the employer merely changed the *method* by which employees were required to inform management that they were leaving work early (from an oral communication to a written note). There was no change in the underlying existing condition of employment requiring employees to notify management of their early departure. As a result, in finding no violation, the Board said:

> [T]he note requirement is merely a more dependable method of enforcing [the] Respondent's rule that its employees must give notice if they leave work early. The rule itself remains intact and the procedural change has an inconsequential impact on those employees who complied with the earlier notice requirement.

280 NLRB at 1120 (footnote omitted). Here, on the other hand, the change is not simply procedural. While production quotas existed, the written-acknowledgement requirement was brand new. Thus, before there was no condition of employment requiring employees affirmatively to acknowledge (either orally or in writing) that they: were aware of the expected number of units to be produced per hour on a particular workstation, had been trained for that specific workstation, fully understood their workstation assignment,

[1] We agree with the judge that Sec. 10(b) of the Act does not bar the complaint's allegations. We adopt the judge's finding that Union Steward Robbie McCaskill's November 1996 knowledge of the Respondent's newly implemented "Workstation Form" is not imputed to the Union for the purpose of triggering the 6-month period prescribed in Sec. 10(b) of the Act for the timely filing of unfair labor practice charges. In doing so, we agree with the judge's finding that McCaskill, although a steward, had no role in matters relating to bargaining, and the Respondent had no reason to believe otherwise. See *Catalina Pacific Concrete Co.,* 330 NLRB 144 (1999); cf. *Baytown Sun,* 255 NLRB 154, 160 (1981) (union steward's knowledge imputed to union for purposes of determining the charge was not timely filed under Sec. 10(b) where the steward in question was found to be more than a steward in that she was closely tied to the union, she was a member of the union's negotiating committee, and had attended all of the 25 or 30 negotiating sessions between the respondent and the union.)

Chairman Hurtgen assumes arguendo that the charge was timely filed. He finds it unnecessary to pass on the 10(b) issue in this case because he would not find the violations alleged, as discussed in his dissent. He notes, however, that in *Catalina*, supra, the steward in question was considered by the respondent there to be one of its supervisors, and it could not be reasonably believed that notice to that person of unilateral changes was an acceptable method of communicating with the union concerning those changes.

and fully understood what was "expected" of them. Thus, the Respondent unilaterally imposed a new substantive condition of employment on the employees, and it did so by dealing directly with the employees themselves. Both actions were in derogation of the obligation to deal with the Union about terms and conditions of employment.[2]

We do not agree, however, with the judge that the Respondent's 5-day suspension and subsequent discharge of employee Anthony Bolden violated Section 8(a)(5) of the Act.[3] As set forth by the judge, the Respondent, some months after its implementation of its requirement of workstation forms, suspended and later discharged Bolden. The judge concluded that the Respondent's unlawful actions regarding its workstation forms were a factor in Bolden's suspension and discharge. The judge noted that Plant Manager Edward Drabek, prior to suspending and later discharging Bolden, reviewed Bolden's production figures. Thus, in the judge's view, Drabek's decisions on discipline were, in part, based on Bolden's failure to make his production quota. We disagree with the judge's reasoning.

In *Great Western Produce Inc*., 299 NLRB 1004 (1990), the Board held that if an employer's unlawfully imposed rules were a factor in the discharge of an employee, then the discharge violates Section 8(a)(5) of the Act. The Board also noted that an employer could raise at the compliance stage defenses to the reinstatement and backpay remedy for employees discharged in violation of Section 8(a)(5).[4]

Here, although we have found that the Respondent's promulgation and implementation of the new workstation forms was a violation of the Act, the General Counsel has not established that the unlawfully imposed changes were a factor in the decision to suspend and later discharge Bolden. Rather, it is clear that discipline was not imposed for Bolden's failure to sign the forms or to acknowledge that work quotas existed on the work being done. Rather, the Respondent suspended and discharged Bolden because he wasted time on the job and therefore fell far short of expected production.

A *Great Western* analysis of an alleged 8(a)(5) discharge differs from a *Wright Line* analysis of an alleged 8(a)(3) discharge. Nonetheless, the judge's *factual* findings in his 8(a)(3) analysis regarding Bolden's discipline cannot be ignored in our 8(a)(5) analysis. Thus, the judge found, in regard to Bolden's 5-day suspension and subsequent discharge, that Bolden had in fact been idle and wasted time. The judge found, as a fact, that Bolden ignored verbal warnings and continued to waste time. In light of these factual findings, we cannot conclude that the Respondent's promulgation and implementation of its workstation forms was a factor in the Respondent's decision to suspend and discharge Bolden.

The fact that Plant Manager Drabek may have reviewed Bolden's production figures does not change our conclusion. In our view, Drabek merely confirmed his foreman's reports that Bolden had wasted time. The new workstation forms did not alter the Respondent's longstanding prohibitions against wasting time. The Respondent's disciplinary actions were not based on any failure by Bolden to recognize and acknowledge the production quotas set forth in the workstation form. Rather, the Respondent suspended and discharged Bolden because of his deliberate acts of ignoring verbal warnings and repeatedly wasting time. The discipline thus had no direct link to the workstation form. Because the General Counsel failed to establish the requisite nexus between the Respondent's unilateral promulgation and implementation of the workstation forms and the subsequent suspension and discharge of Bolden, we will dismiss the complaint in this regard.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Brimar Corporation, Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order, as modified.

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[2] See *Garney Morris, Inc*., 313 NLRB 101, 112–113, 119–120 (1993), enfd. mem. 47 F.3d 1161 (3d Cir. 1995) (unilateral implementation of new, more detailed disciplinary warning form and new requirement that employees sign it); *Central Cartage, Inc*., 236 NLRB 1232, 1237–1239, 1258 (1978), enfd. mem. 607 F.2d 1007 (7th Cir. 1979) (unilateral implementation of requirement that employees sign revised job descriptions and affirmatively acknowledge that they understand their duties and responsibilities); and *Nathan Littauer Hospital Assn*., 229 NLRB 1122, 1124–1125 (1977) (unilateral implementation of new requirement that full-time registered nurses record their regular time, using timeclock, in addition to existing requirement of manually signing out for overtime credit).

[3] The judge recommended dismissal of the complaint's allegations that the Respondent's 5-day suspension and discharge of Bolden violated Sec. 8(a)(3) of the Act. No party excepted to the judge's findings regarding the 8(a)(3) allegations.

[4] See also *Consec Security*, 328 NLRB 1201 (1999) (employer's discharge of employee violated Sec. 8(a)(5) where the employee's breach of an unlawfully imposed rule was most significant factor in decision to discharge).

[5] Chairman Hurtgen concludes in his dissent that the promulgation and implementation of the workstation forms were not violative of Sec. 8(a)(5). However, Chairman Hurtgen agrees that even if this conduct were unlawful under Sec. 8(a)(5), the discipline of Bolden was not because of the forms.

Chairman Hurtgen does not pass on whether discipline is unlawful if it is based in part on an unlawful requirement but Respondent can show that the discipline would have been imposed in any event because of another (lawful) requirement.

1. Delete paragraphs 1(c) and 2(b), (c), and (d).

2. Substitute the attached notice for that of the administrative law judge.

CHAIRMAN HURTGEN, concurring in part and dissenting in part.

I agree with the majority in all respects except as follows. I do not agree that the Respondent violated the Act by its 1996 promulgation and implementation of its workstation forms or by requiring its employees to sign the forms to acknowledge that they were aware of the production quotas.

It is clear that an employer violates Section 8(a)(5) and (1) of the Act by unilaterally implementing, without notice to the union, changes in terms and conditions of its employees. *NLRB v. Katz,* 369 U.S. 736 (1962). However, in order for such a modification to violate the Act, it must involve a change that is material, substantial, and significant, affecting the terms and conditions of employment of bargaining unit employees. *Carrier Corp*., 319 NLRB 184, 193 (1995), and cases cited therein. I would not find that the promulgation and implementation of the workstation forms constituted a material, substantial, or significant change in the employees' terms and condition of employment necessitating bargaining. As found by the judge, the Respondent, since 1985, has informed its employees of the expected hourly production quota. In addition, this quota was prominently stamped on parts used in production. In October 1996, the Respondent simply put these preexisting quotas in writing, and required the employees to sign the forms to show that they had been apprised of the expected hourly quota. This was done in order to conform to internationally accepted standards (the "ISO 9001" standard), and to thereby qualify for a "certification" from Ford Motor Company. The use of the forms only memorialized in print what had been a standard practice for at least 11 years. It did not increase or decrease the quotas, or impose any new or increased production requirements on the employees. The quotas, and the employees' knowledge thereof, remained the same. See *Goren Printing Co.,* 280 NLRB 1120 (1986).[1]

My colleagues say that the form establishes employee knowledge and consent. However, the quota has been in existence for a long period, and Respondent has told employees of it. By continuing to work, employees impliedly consented to the quota. The written form of "knowledge and consent" was simply a means of eliminating any possible doubt as to existence of these two factors. As in *Goren*, it was "a more dependable method of enforcing the Respondent's rule."

The judge and my colleagues note that the workstation forms could be used in a disciplinary proceeding. However, this represents no real change. Any discipline for an employee's failure to meet production quotas would have to be established in one way or another—i.e., by workstation forms, by supervisor-generated documents, or by statements. Prior to and after the "change" involved here, an employee could be disciplined for the same failure to meet a quota. The proof of the failure may now differ, but the quota and the discipline remain the same.[2]

I would therefore find no change as to which the Respondent was required to bargain.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT promulgate workstation forms containing production "expectations" without giving Shopmen's Local 508, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO timely notice and opportunity to bargain.

WE WILL NOT require you to sign the workstation forms without first giving the union timely notice and opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with Shopmen's Local 508, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO as the exclusive representative of the employees in the unit specified in the applicable collective-- bargaining agreement.

BRIMAR CORPORATION

[1] In *Goren*, the Board found no 8(a)(5) violation in regard to an employer's unilaterally imposed requirement that employees provide a note, rather than an oral report, if the employee needed to leave work early. The Board found that the written requirement would be a more "dependable" method of insuring that an employee would meet the existing requirement of reporting an early departure. Similarly, here, the Respondent's workstation form would be a more dependable way to insure compliance with the "ISO 9001" standard needed for a "certification' from Ford Motor Company.

[2] My colleagues suggest that Respondent placed "new emphasis" on achieving the quotas. There is insufficient evidence that Respondent enforced the quota more strictly.

Richard F. Chubaj, Esq., for the General Counsel.
Lawrence J. BeBrincat, Esq. (Brian M. Smith & Associates), of Troy, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. This case was tried in Detroit, Michigan, on March 12, 1998. The charge was filed by the above-named Union on June 6, 1997,[1] and the complaint was issued on September 30.

The complaint alleges that Respondent (a) unilaterally implemented production standards, (b) dealt directly with unit members, (c) threatened them with discipline if they did not acknowledge the standards, and (d) suspended and later discharged employee Anthony Bolden for failure to meet them—all in violation of Section 8(a)(5) and (1) of the National Labor Relations Act. Also, the actions in (d) are alleged to be discriminatory in violation of Section 8(a)(5), (3), and (1) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with approximately 56 production workers, fabricates materials handling racks for the automotive industry at a facility in Detroit where it annually receives in excess of $50,000 in revenues and from which it sells and ships goods valued in excess of $50,000 to major automobile manufacturers directly engaged in interstate commerce. It admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED BARGAINING FAILURE

Since its inception in 1985 Respondent has trained employees in proper techniques for making different kinds of automotive racks, and in connection with that training employees are routinely given an "expected" hourly production rate for each type of rack. In addition, the rate is prominently stamped on parts used in making the different racks.

The current collective-bargaining agreement between Respondent and the Union extends from June 17, 1996, to June 16, 1999. During the spring of 1996, while negotiations for that agreement were in progress, Respondent's president, Brian Sullivan, mentioned to Union Business Agent (and negotiator) Joseph Lyscas that the Company was attempting to conform its processes and procedures to internationally accepted ("ISO 9001") standards, thereby to obtain a "certification" from Ford Motor Company. He also told Lyscas that the effort would entail documenting some policies and practices.

In October 1996 and without advising any union bargaining representative, Respondent began to require employees to sign a new "Workstation Form" that, among other things, contained an expected number of units to be produced per hour. The form also recited:

> By signing the form, you are stating that you were trained for a specific workstation assignment. You are also stating that you fully under this workstation/assignment and what is expected on you.[2]

On the morning of May 7, a newly designated chief union steward and an assistant steward (Bolden and Ron Gardner, respectively) refused to sign forms containing an expected hourly rate.[3] Shortly thereafter Company President Sullivan complained to Union Representative Lyscas about the refusal. Lyscas supported the stewards.

I find a violation of Respondent's obligation to bargain.

Introducing the form was more than a simple memorialization of a past practice The expressed purpose of the form was to place new emphasis on achieving production quotas; and by signing, employees admitted awareness of management's "expectations" for specific items. In addition, the document would be readily available for use in disciplinary proceedings. This clearly impacts on "terms and conditions of employment" with sufficient significance as to constitute a matter that should have been brought to the attention of the bargaining representative prior to implementation,[4] i.e., it entails a mandatory subject of bargaining.[5]

Respondent does not claim otherwise in its brief. Instead, it argues that the charged bargaining violation is time barred by Section 10(b) of the Act. In this regard, it argues that the Union had knowledge of the new form prior to the 6-month period immediately preceding filing of the charge on June 6 and particularly on November 14, 1996, when then Chief Shop Steward McCaskill signed a form containing an expected production rate.

The statement of Respondent's president, Brian Sullivan, to Union Negotiator Joseph Lyscas in the spring of 1996 while negotiations for a new contract were in progress (i.e., that in efforts to obtain "ISO 9001" certification the Company would begin to document some of its current policies and practices) is far too vague to constitute proper notice. Further, there is no evidence that employees (including Chief Steward McCaskill) understood prior to May 7 the import of the new workstation form or brought it to the attention of union officials.

There remains to be considered Respondent's argument that since a chief steward knew of the new form on November 14, his knowledge should be attributed to the Union. The three cases cited in support of that contention are inapposite.[6] All

[1] All dates are 1997 unless otherwise indicated.

[2] The Workstation Form was revised in minor respects from time to time. On at least two occasions (on November 14 and 18, 1996) the form with an "expected rate per hour" was signed by then Chief Union Steward Robbie McCaskill.

[3] There is no credible evidence that the forms ever reflected an increase in the prior expected production rate for particular items.

[4] *New York Telephone Co*., 304 NLRB 183 (1991); *Venture Packaging*, 294 NLRB 544 (1989).

[5] *NLRB v. Katz*, 369 U.S. 736 (1962).

[6] *Iron Workers Local 433 (United Steel)*, 280 NLRB 1325 (1986); *Carpenters Local 296 (Acrom Construction)*, 305 NLRB 822 (1991); and *Plumbers Local 250 (Murphy Bros.)*, 311 NLRB 491 (1993).

involve situations where unions were found responsible for misconduct by shop stewards. It is axiomatic, however, that a person may be an agent for one purpose but not for another. Here, Steward McCaskill was an ordinary production worker with no role in matters relating to bargaining subjects, and Respondent had no reason to believe otherwise.[7]

I find the charge is not barred by Section 10(b). Also, I find a failure to bargain as well as direct dealing with employees by asking them to sign forms bearing the unilaterally imposed production norms, both in violation of Section 8(a) (5) and (1), as alleged in the complaint. However, there is no evidence of any threat to punish employees for not signing and that allegation will be dismissed.

III. DISCIPLINE AND DISCHARGE OF BOLDEN

On May 7, Welding Shop Foreman Bobbie Perkins unsucessfully urged Stewards Bolden and Gardner to sign the forms, pointing out that the "expectation" listed on the form for the item (# 4048) they were working on that day (25 per hour or 200 per 8-hour day) was realistic and had been achieved by other employees.[8] Later that day he observed them "goofing around . . . taking their time . . . talking to each other . . . not trying" and he told them they needed to pick up the pace "to make their counts." He reported the situation to Plant Manager Edward Drabek who, after reviewing their production data for the day,[9] decided to and did issue them written warnings at the beginning of the morning shift on the next day.

Both warnings were for "wasting time."[10] Bolden received a 5-day suspension without pay, the warning indicating that his was a second offense under the Company's progressive disciplinary rules."[11] His prior written warning, also for wasting time, was issued by Perkins for conduct occurring on April 18.[12] Shortly thereafter, on Friday, April 25, Bolden almost received another written warning. On that day he and Gardner had spent 3-1/2 hours working together and had produced only 3 units of an item with a two-man expectation of 14 over an 8-hour period. Perkins called them into the office, showed them a write up for wasting time he had prepared for each and offered an alternative: Go back and work hard, in which case no warning would issue. Gardner opted to accept the warning and went home for the day. Bolden returned to the job and before the shift was over produced an additional five units working alone.

On June 18 and after checking production data, Drabek gave Bolden a third written warning and termination notice for wasting time on June 17. The item he had been working on for several weeks had an expected production rate of 32 per hour. He had achieved a high of 28 per hour on June 3 but his output steadily declined from day to day. On June 17 Perkins warned him several times to stop talking with other employees and pay attention to production. Notwithstanding, he averaged only 23 items per hour over a 5-hour period on that day. At trial, Bolden asserted that the warning was unfair because he did not work a full day on June 17, having received permission to leave for the day at noon "to go to the clinic." He did not explain how that circumstance had any effect on his hourly production rate however.[13]

Other than Bolden and Gardner, no other employees were were disciplined for "wasting time" during the first 6 months of 1997. One employee (D. Bush) was terminated for a third offense on October 17, 1996, and another (C. Frazier) received a first[t] warning and 1-day suspension on January 23, 1996.

Two issues are presented: The first is whether the previously found unilaterally and unlawfully imposed production standards played a significant part in Bolden's suspension and discharge. If so, each of those disciplines constitute additional violations of Section 8(a)(5) and (1) in derogation of the Union's status as bargaining representative of unit employees.[14]

I find violations.

In connection with the warning and 5-day suspension issued on May 8, it is clear from Plant Manager Drabek's testimony that his decision to issue a warning and suspension was based in part on his review of data leading him to conclude that in addition to wasting time Bolden "wasn't getting production out either." The same is true with regard to his decision to issue the third warning and termination notice to Bolden on June 18. He testified that before deciding to issue it he verified Foreman Perkins' claim that Bolden was "not doing his production."

Accordingly, and as an appropriate and approved[15] remedy for these 8(a) (5) violations, I will order Bolden reinstated with backpay.

The remaining issue is whether the disciplinary actions were also discriminatory in violation of Section 8(a)(3) and (1).

I find this not to be the case.

While there is a likelihood that Bolden's refusal on May 7 to sign a form bearing an expected hourly production rate was a factor in the decision to give him a written warning and suspension for "wasting time" on that date, I am persuaded that Re-

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[7] See dicta in *Wagner Distribution Services*, 262 NLRB 764, 774 and fn. 2 (1982).

[8] Perkins cites, for example, the work of a new employee (Sinceria Loving) who produced 224 units of the item over an 8-hour period on May 8.

[9] Drabek noted from the data that over the 8-hour workday, Bolden produced 145 items and Gardner's total was 105. In his testimony Drabek states that on "going over those [the data . . . I also found that during his wasting time . . . [Bolden] wasn't getting production out either." For his part, Bolden testified that he could not recall how many items he had produced that day; and he claims that any idleness on his part was due to a foreman's 20-minute delay in responding to his complaint that "the parts did not fit" and that he so advised Perkins at the time.

[10] Gardner's warning is not alleged to have been discriminatorially issued. Perkins states that after May 7 Gardner consistently met and often exceeded production quotas.

[11] The rules call for a 1-day suspension for a first offense, 5 days for the second, and discharge for the third.

[12] This warning contains a notation that Bolden had received an earlier verbal warning for the same offense.

[13] Although Bolden testified that his clinic appointment was for removal of a piece of steel in his eye, there is no indication he made that fact known to Perkins or any other supervisor in requesting leave or in explanation for his low hourly production rate when he received verbal warnings on June 17 and the written warning on June 18.

[14] *Great Western Produce*, 299 NLRB 1004, 1005 (1990), and cases cited in fn. 11.

[15] *Sygma Network Corp*., 317 NLRB 411 (1995); *Kysor Industrial Corp*., 307 NLRB 598, 603 (1992).

spondent has met its *Wright Line*[16] burden by showing that he would have received that discipline (as well as the warning and termination notice issued on June 18) in any event.

First, the weight of evidence shows that on May 7 Bolden was idling and otherwise wasting time, that he had been verbally cautioned earlier during the day, and that he had received numerous warnings about the matter well prior to any protected act on his part. Yet. despite the "2nd written warning" on May 7 and his awareness that a third could result in termination under company rules, on June 17 he again ignored verbal warnings to stop wasting time and was terminated. His discharge—a culmination of the numerous prior warnings for the same offense—was not unprecedented. Another employee had been terminated for the same pattern of conduct 8 months earlier and others have been given written and verbal warnings.

Second, there is no showing of antiunion animus on the part of Respondent. Indeed, another union steward (Gardner) succeeded in averting a third warning by conscientiously avoiding idleness after May 7.

The 8(a)(3) allegation will be dismissed.

CONCLUSION OF LAW

Respondent violated the Act in the particulars and for the reasons stated above; and its violations have affected, and unless permanently enjoined will continue to affect, commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Among other things, Respondent will be ordered to compensate Anthony Bolden in full for loss of pay and benefits during his unlawful 5-day suspension in May 1997 and to offer him reinstatement and make him whole for any loss of earnings and other benefits resulting from his unlawful termination on June 18, with losses to be computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The Respondent, Brimar Corporation, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating workstation forms containing production "expectations" without giving Shopmen's Local 508, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO timely notice and opportunity to bargain.

(b) Dealing directly with employees by requiring them to sign the workstation forms.

(c) Warning, suspending, or otherwise disciplining employees for not signing the forms.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with Shopmen's Local 508, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL–CIO as the exclusive representative of the employees in the unit specified in the applicable collective bargaining agreement.

(b) Compensate Anthony Bolden in full for loss of pay and benefits during his unlawful 5-day suspension in May 1997 and, within 14 days from the date of this Order, offer him reinstatement and make him whole for any loss of earnings and other benefits resulting from his unlawful termination on June 18, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge and within 3 days thereafter notify Anthony Bolden in writing that this has been done and that the suspension and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Detroit, Michigan, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings**,** the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current em-

[16] See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ployees and former employees employed by the Respondent at any time since May 7, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.